

REMARKS/ARGUMENTS

Claims 1 to 24 are pending in this application. No claims are added, canceled or amended herein.

In the outstanding Office Action, the Examiner has required restriction under 35 U.S.C. § 121 between the following Groups:

Group	Claims	Subject Matter	Class
I	1, 10-11	A method for inhibiting replication of KSHV by inhibiting c-Kit signalling pathway	514/1
II	3, 14-15	A method for inhibiting replication of KSHV by inhibiting type I sigma receptor signalling pathway	514/1
III	2, 12-13	A method for treatment of Kaposi sarcoma by inhibiting c-Kit signalling pathway	514/1
IV	4, 16-17	A method for treatment of Kaposi sarcoma by inhibiting type I sigma receptor signalling pathway	514/1
V	5	A gene expression profile specific for the lytic phase of KSHV replication	536/23.1
VI	6	A gene expression profile specific for the latent phase of KSHV replication	536/23.1
VII	7	A microarray	435/287.2 536/24.3
VIII	8	A method for diagnosing KSHV or the stage of KSHV replication	435/6
IX	9	A method for identifying modulators of KSHV replication	435/7.1
X	18-24	A method of doing business	702/19 435/6

It is asserted in the Office Action that the inventions of Groups I to X are distinct from each other. The Examiner has also required upon election of certain groups, an election of species from among possible genes listed in Table 2 and among KSHV diagnosis or stage of replication.

To be fully responsive to the restriction requirement, Applicants elect Group I (Claims 1, 10 and 11) for examination in this application. This election is with traverse

insofar as the requirement is improper to the extent it calls for restriction between each of Groups I-IV as well as between Groups V and VI.

According to MPEP § 803, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

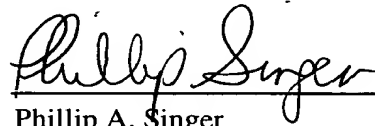
- (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05-§ 806.05(i)); *and*
- (B) There must be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).

For purposes of the initial requirement, a serious burden may be *prima facie* shown if the examiner shows separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. In the subject application, the Examiner has restricted the claims into 10 different groups. However, ***Groups I through IV are all classified in Class 514/1.*** Thus, the Examiner has not established a *prima facie* case of a serious burden for examining Groups I through IV together. Accordingly, Applicants respectfully request rejoinder of the claims of Groups II, III, and IV with the claims of elected Group I in the present application

In view of the above, Applicants respectfully request that the restriction under 35 U.S.C. § 121 be withdrawn to the extent that it requires division of groups of claims sharing the same classification and that examination of the application on the merits of the elected claims of Group I along with the claims of Groups II-IV commence.

If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (206) 332-1380.

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Phillip A. Singer
Registration No. 40,176

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439